STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2810 By: Denney

COMMITTEE SUBSTITUTE

An Act relating to energy; creating the Oklahoma Refinery Revitalization Act; stating purpose of the act; providing definitions; requiring the Governor to request the Environmental Protection Agency to negotiate with the Department of Environmental Quality for a Refinery Permitting Cooperative Agreement (RPCA); directing the Executive Director to designate staff for certain purposes; authorizing the Executive Director and certain Indian tribes to sign the RPCA; stipulating that certain actions occur upon signing the RPCA; authorizing the Executive Director to accept consolidated applications and enter into certain memoranda of agreements; authorizing the Executive Director to request financial, technical, legal, and other assistance from the federal government for certain purposes; requiring the RPCA to designate each state and federal agency with certain expertise; designating the Department of Environmental Quality as the lead agency for certain purposes; directing the Executive Director to coordinate all state, federal, tribal, and local authorizations and reviews; directing the Executive Director to establish a schedule and preapplication process for refinery facility applications; requiring draft permits to be completed within certain time period; allowing applicant to stop process; allowing an applicant to pursue certain remedies if schedule is not met; stipulating the RPCA address the National Environmental Policy Act of 1969 compliance actions; providing for the preparation of a single environmental impact statement; requiring state agencies to cooperate with the Department in preparing an environmental impact statement; requiring the Department to maintain a consolidated record of administrative decisions; making the record the exclusive record for state administrative proceedings; providing for the appeal of state agency decisions or actions to a certain panel; establishing panel; establishing guidelines for the panel; providing for judicial appeal; providing for application of environmental laws and rules; directing the Corporation Commission to cooperate with the Federal Energy Regulatory Commission on authorizations for crude oil or refined petroleum product pipeline facilities; authorizing the Commission to establish a schedule for state pipeline authorizations; listing certain guidelines; providing for judicial appeal; directing the Commission to issue an order authorizing certain actions relating

to the pipeline facility; authorizing the holder of a Commission order to acquire property through eminent domain in certain circumstances; allowing a taxpayer to treat certain costs of a qualified refinery property as a nonchargeable expense to a capital account; limiting deduction to certain year; providing for how election is taken; prohibiting revocation of election; defining terms; providing for compliance with provisions if total output of an existing qualified refinery is increased by a certain percentage; prohibiting deduction for certain types of refinery property; allowing allocation of the deduction to certain qualified persons; establishing guidelines for allocating the deduction; requiring taxpayers to file a certain report in order to claim the deduction; limiting application of law to certain qualified refinery properties; allowing certain refiners to take a deduction for certain sulfur regulation compliance costs; providing for calculation of allocation amount; providing filing criteria for election; requiring certain written notice for allocations to owners; limiting application of law to certain refinery properties; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-16-101 of Title 27A, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Refinery Revitalization Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-16-102 of Title 27A, unless there is created a duplication in numbering, reads as follows:

The purpose of the Oklahoma Refinery Revitalization Act is to encourage the expansion of refining capacity within the State of Oklahoma by providing incentives for growth and by detailing an accelerated review and approval process of all regulatory approvals for certain refinery facilities. Additionally, the act seeks to provide legal and technical assistance to state agencies, which may

have resources that are inadequate to meet refinery facility permit review demands.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-16-103 of Title 27A, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Refinery Revitalization Act:

1. "Executive Director" means the Executive Director of the Oklahoma Department of Environmental Quality;

2. "Administrator" means the Administrator of the Environmental Protection Agency;

3. "RPCA" means the Refinery Permitting Cooperative Agreement;

4. "Federal authorization" means any authorization required under federal law, including but not limited to, the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, the Toxic Substances Control Act, the National Historic Preservation Act, the National Environmental Policy Act of 1969, and the Endangered Species Act, in order to site, construct, upgrade, or operate a refinery facility, including such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a federal, state, or local agency;

5. "Commission" means the Oklahoma Corporation Commission;

6. "Tax Commission" means the Oklahoma Tax Commission; and

7. "Refinery facility" means any facility designed and operated to receive, unload, store, process and refine raw crude oil by any chemical or physical process, including distillation, fluid catalytic cracking, hydrocracking, coking, alkylation, etherification, polymerization, catalytic reforming, isomerization, hydrotreating, blending, and any combination thereof.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-16-104 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Not more than thirty (30) days after the effective date of the Oklahoma Refinery Revitalization Act, the Governor shall request the Administrator of the United States Environmental Protection Agency to enter into negotiations with the Executive Director of the Department of Environmental Quality for a Refinery Permitting Cooperative Agreement (RPCA) for the purposes set forth in this act. The RPCA shall be a memorandum of understanding as provided for in the Energy Policy Act of 2005. The Executive Director shall designate a senior official responsible for negotiations, and dedicate sufficient other staff and resources to ensure, full implementation of the purposes of this Act and any rules promulgated pursuant to this act as allowed by state and federal legislation.

B. The Executive Director and the appropriate representative of any Indian Tribe with jurisdiction over a potential refinery site, may be signatories to the RPCA negotiated pursuant to this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-16-105 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Not more than thirty (30) days after the Executive Director of the Department of Environmental Quality and the Administrator of the United States Environmental Protection Agency become signatories to the Refinery Permitting Cooperative Agreement (RPCA) as provided for in Section 4 of this act, the following shall occur:

1. The Executive Director shall designate one or more employees of the Department of Environmental Quality with expertise relating to the siting and operation of refineries to provide legal and technical assistance to any permit applicants in accordance with the designations made in subsection E of this section; and

2. The Executive Director and the Administrator shall identify steps, including timelines, that each shall take to streamline the consideration of state and federal environmental permits for a new refinery facility.

B. Pursuant to the provisions of the RPCA, the Executive Director shall be authorized to:

1. Accept from a refiner a consolidated application for all permits required from the Environmental Protection Agency and the Department of Environmental Quality, to the extent consistent with applicable law and the RPCA;

2. Enter into memoranda of agreement with other state and federal agencies to coordinate consideration of refinery facility applications and permits; and

3. Enter into memoranda of agreement with state and federal agencies, under which state and federal review of refinery facility permit applications will be coordinated and concurrently considered, to the extent practicable.

C. The Executive Director is authorized to request financial assistance from the federal government to facilitate the hiring of additional personnel with expertise in fields relevant to consideration of refinery permits.

D. The Executive Director is authorized to request technical, legal, or other assistance from the federal government to facilitate the state level review of applications for the construction of new refinery facilities.

E. The RPCA shall designate each state and federal agency that will provide technical and legal assistance relating to the siting and operation of refinery facilities, with respect to each of the following, if applicable:

1. The Clean Air Act (42 U.S.C. 7401 et seq.);

2. The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

3. The Safe Drinking Water Act (42 U.S.C. 300f et seq.);

4. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

5. The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

6. The Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

7. The National Historic Preservation Act (16 U.S.C. 470 et seq.);

8. The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

9. The Endangered Species Act (16 U.S.C. 1531 et seq.).

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-16-106 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Upon the written request of a prospective applicant for authorization of a refinery facility in the State of Oklahoma, the Department of Environmental Quality shall act as the lead state agency for the purpose of coordinating all applicable state and federal authorizations and environmental reviews of the refining facility. To the maximum extent practicable under applicable state and federal law, the Executive Director of the Department of Environmental Quality shall coordinate the state and federal authorization and review process with any federal, state, tribal, and local agencies responsible for conducting separate permitting and environmental reviews of the refining facility.

B. 1. The Executive Director, in coordination with the state agencies and, as appropriate, with federal, tribal and local agencies that are willing to coordinate their separate permitting and environmental reviews with the state permitting and reviews process, shall establish a schedule with prompt and binding intermediate and ultimate deadlines for the review of, and state authorization decisions relating to, refinery facility siting and operation applications.

2. Prior to establishing the schedule, the Executive Director shall provide an expeditious preapplication process that allows applicants to confer with the agencies involved and to have each agency communicate to the prospective applicant within sixty (60) days:

a. the likelihood of approval for a potential refinery facility, and

b. key issues of concern for the agencies and the local community.

3. The Executive Director shall consider the preapplication findings under paragraph 2 of this subsection when setting the schedule and shall ensure that once an application has been submitted with the necessary information, as determined by the Executive Director, a draft permit shall be completed within six (6) months or, where circumstances require otherwise, as soon as thereafter practicable. An applicant may request that the permitting process be stopped at anytime by agreement with the Executive Director and Administrator.

4. If a state administrative agency does not complete a refinery application authorization process in accordance with the schedule established by the Executive Director pursuant to this subsection, the applicant may pursue remedies set forth in subsection F of this section.

C. 1. The RPCA shall address the coordination of all applicable state and federal actions necessary for complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if applicable, and shall identify the entity responsible for preparing any environmental impact statement or any other form of environmental review that is required.

2. If the United States Environmental Protection Agency determines an environmental impact statement is required, the Department of Environmental Quality shall work with the Agency to

prepare a single environmental impact statement, which shall consolidate the environmental reviews of all state and federal agencies considering any aspect of the refinery facility covered by the environmental impact statement.

D. Each state agency considering an aspect of the siting or operation of a refinery facility in the State of Oklahoma shall cooperate with the Department of Environmental Quality and comply with the deadlines established by the Department in the preparation of an environmental impact statement or such other form of environmental review that is required.

E. The Department of Environmental Quality shall, with the cooperation of state and federal administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the Department, by a state administrative agency or officer acting under delegated federal authority, or by a federal administrative agency with respect to the siting or operation of a refinery facility in the state. The record shall be the exclusive record for any state administrative proceeding that is an appeal or review of any refinery facility siting or operation decision made or action taken.

F. If a state agency has denied state authorization required for a refinery facility in the state, or has failed to act by a deadline established by the Director pursuant to subsection B of this section, the applicant may file an appeal with a review panel comprised of the Oklahoma Secretary of the Environment or a designee, the Secretary of Energy or a designee, and the Secretary of Transportation or a designee. Based on the record maintained pursuant to subsection E of this section, and in consultation with the affected state agency, the review panel may then either order the immediate issuance of the necessary state authorization with appropriate conditions, or deny the appeal. The review panel shall issue a decision within sixty (60) days after the filing of the

appeal. In making a decision under this subsection, the review panel shall adhere to applicable requirements of state and federal law, including each of the laws referred to in subsection E of Section 5 of this act. Any judicial appeal of the decision of the review panel shall be to an Oklahoma court of competent jurisdiction as allowed under the Constitution of the State of Oklahoma.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-16-107 of Title 27A, unless there is created a duplication in numbering, reads as follows:

Nothing in the Oklahoma Refinery Revitalization Act shall be construed to waive the applicability of any environmental laws and rules to any refinery facility.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 67 of Title 52, unless there is created a duplication in numbering, reads as follows:

A. The Corporation Commission shall cooperate with and comply with deadlines established by the Federal Energy Regulatory Commission in regards to authorization for the construction, siting, expansion, or operation of crude oil or refined petroleum product pipeline facilities.

B. The Corporation Commission shall have the authority to establish a schedule for all state pipeline authorizations with respect to crude oil or refined petroleum product pipeline facilities. In establishing the schedule, the Commission shall:

1. Ensure expeditious completion of all proceedings; and

2. Accommodate the applicable schedules established by state law for such proceedings.

C. Any judicial appeal of the actions of the Commission shall be to an Oklahoma court of competent jurisdiction as provided for by the Constitution of the State of Oklahoma.

D. Upon application by a qualified applicant, the Commission shall issue an order authorizing, in whole or in part, the siting,

construction, expansion, or operation of a crude oil or refined petroleum product pipeline facility which is located in either interstate or intrastate commerce.

E. If the holder of a Commission order issued pursuant to this section cannot acquire by contract, or is unable to agree with the owner of the property on the amount of compensation to be paid for:

1. The necessary right-of-way to site, construct, operate, and maintain a pipeline or pipelines for the transportation of crude oil or refined petroleum products; and

2. The necessary land or other property for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipeline or pipelines,

the holder of the order may acquire the property through the exercise of the right of eminent domain in an Oklahoma court of competent jurisdiction as allowed under the Constitution of the State of Oklahoma.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.204 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A taxpayer may elect to treat one hundred percent (100%) of the cost of a qualified refinery property as an expense that is not chargeable to a capital account. Any cost so treated shall be allowed as a deduction for the year in which the qualified refinery property expense is incurred.

B. 1. An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. The election shall be made in a manner as the Oklahoma Tax Commission may by rule prescribe.

2. An election made pursuant to this section shall not be revoked except with the consent of the Tax Commission.

C. 1. As used in this section, the term "qualified refinery property" means any portion of a qualified refinery:

a. the original use of which commences with the taxpayer,

b. which is placed in service by the taxpayer after the effective date of this act and before January 1, 2012,

c. which meets the requirements of subsection E of this section, other than a qualified refinery which is separate from any existing refinery,

d. which meets all applicable environmental laws in effect on the date the portion was placed in service,

e. for which no written binding contract for the construction of was in effect on or before June 14, 2005, and

f. (1) the construction of which is subject to a written binding construction contract entered into before January 1, 2008,

(2) which is placed in service before January 1, 2008, or

(3) in the case of self-constructed property, the construction of which began after June 14, 2005, and before January 1, 2008.

2. For purposes of subparagraph a of paragraph 1 of this subsection, if property is:

a. originally placed in service after the effective date of this act by a person, and

b. sold and leased back to the person within three (3) months after the date the property was originally placed in service,

the property shall be treated as originally placed in service not earlier than the date on which the property is used under the leaseback provision referred to in subparagraph b of paragraph 1 of this subsection.

3. A waiver under the federal Clean Air Act shall not be taken into account in determining whether the requirements of subparagraph d of paragraph 1 of this subsection are met.

D. For purposes of this section, the term "qualified refinery" means any refinery located in the State of Oklahoma that is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels.

E. The requirements of this section shall be met if the portion of the qualified refinery:

1. Enables the existing qualified refinery to increase total volume output, determined without regard to asphalt or lube oil, by five (5%) percent or more on an average daily basis; or

2. Enables the existing qualified refinery to process qualified fuels at a rate that is equal to or greater than twenty-five (25%) percent of the total throughput of such qualified refinery on an average daily basis.

F. No deduction shall be allowed under this section for any qualified refinery property the primary purpose of which is for use as a topping plant, asphalt plant, lube oil facility, or crude or product terminal.

G. 1. The taxpayer may elect to allocate all or a portion of the deduction allowable under subsection A of this section to qualified persons. The allocation shall be equal to the ratable share of the total amount allocated for each qualified person, determined on the basis of the ownership interest the person has in the taxpayer. The taxable income of the taxpayer shall not be reduced under Section 10 of this act by reason of any amount to which this subsection applies.

2. An election under paragraph 1 of this subsection for any taxable year shall be made on a timely filed return for that year. The election, once made, shall be irrevocable for the taxable year.

3. If any portion of the deduction available under subsection A of this section is allocated to an owner under paragraph 1 of this subsection, the cooperative shall provide the owner receiving the allocation written notice of the amount of the allocation. Notice shall be provided before the date on which the return described in paragraph 2 of this subsection is due.

H. No deduction shall be allowed under subsection A of this section to any taxpayer for any taxable year unless the taxpayer files with the Tax Commission a report containing information with respect to the operation of the refineries as shall be required by the Tax Commission.

I. The provisions of this section shall apply to qualified refinery properties placed in service after the effective date of this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.205 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A refiner who is:

1. A small business refiner; or

2. One or more persons directly holding an ownership interest in the refiner,

may elect to allocate all or a portion of the cost of complying with sulfur regulations issued by the Environmental Protection Agency as a deduction allowable to such persons. The allocation for each person shall be equal to the ratable share of the total amount allocated, determined on the basis of the ownership interest of the person. The taxable income of the refiner shall not be reduced by reason of any amount allowed pursuant to this section.

B. An election made pursuant to subsection A of this section for any taxable year shall be made on a timely filed return for such year. The election, once made, shall be irrevocable for the taxable year.

C. If any portion of the deduction available under subsection A of this section is allocated to an owner, the cooperative shall provide the owner receiving the allocation written notice of the amount of the allocation. Notice shall be provided before the date on which the return described in subsection B of this section is due.

D. The provisions of this section shall apply to refinery properties placed in service after the effective date of this act.

SECTION 11. This act shall become effective July 1, 2006.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

50-2-9719 KB 03/07/06